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Federal Election Commission  
Office of Complaints Examination & Legal Administration  
Attn: Donna Rawls  
999 E. Street NW  
Washington D. C. 20463

2016 OCT 26 PM 1: 57

October 20, 2016

OFFICE OF GENERAL  
COUNSEL

RE: MUR 7053  
Flemming for Congress

Dear Ms. Rawls:

In response to the current letter from the Federal Election Commission regarding the above referenced MUR, please find Spanky LLC's response submitted by David Loftus, Manager.

Sherry Hackett is the "sole owner" of Spanky LLC, and the fund is managed by David Loftus. Mr. Loftus is the Manager/spokesperson for Spanky LLC.

- a. As stated in an earlier response to the structure of Spanky LLC, Spanky, LLC is a Limited Liability Company in the State of California.
  - i. Formed for the specific purpose of loaning funds to various real estate and **other** investments/entities as deemed appropriate by its management.
  - ii. Corporate Papers (included with this response) demonstrate the structure of the corporation. California Articles of Organization were provided to the FEC on May 20, 2016
  - iii. Tax forms demonstrated Spanky LLC is a Limited Liability Company with NO partnership distribution of any kind.
  - iv. List of loans made to other entities by Spanky LLC in the course of normal business.

Based upon the **information available at the time** the loan line of credit was issued to the Flemming for Congress Campaign Committee, it was determined by management that Spanky LLC qualified under CFR 100.83 (a). Following is taken directly from the Congressional Candidates & Committees August 2011 Federal Election Commission Campaign Guide: page 36 #2 Brokerage Loans and other Lines of Credit Obtained by Candidate.

Both Schedule C-1 and Schedule C-P-1 (for Presidential candidates) include a statement to be signed by an officer of the lending institution certifying that the information provided by the committee is accurate and that the terms and conditions of the loan comply with FEC rules

**2. Brokerage Loans and  
Other Lines of Credit  
Obtained by Candidate**

Candidates may use funds derived from an advance on their brokerage account, credit card account or other line of credit to finance their campaigns. If the extension of credit is:

- In accordance with applicable law;
- Under commercially reasonable terms; and
- Made by persons who make such loans in the normal course of their business.

100.83(a).

The candidate's authorized committee has the option of repaying loans derived from a candidate's brokerage account or other line of

• Is subject to a definite repayment schedule.

100.83(d).

An overdraft that does not meet the above conditions is a prohibited contribution 114.2 Note that if the overdraft protection is based on a line of credit extended by the bank, draws on that line of credit must be disclosed on Schedule C-1, as discussed above.

**4. Investment Income**

Interest earned on investments, such as interest earned on invested funds and dividends earned on securities, are not considered contributions. Such funds, however, must be transferred back into the main campaign depository before being disbursed by the campaign. Additionally, tax laws apply. If a committee receives interest from a bank it must list that bank on the committee's Form 1, See 103.3(a); AOs 1999-08, 1997-04, 1986-18 and 1980-39, as well as Appendix G, "Compliance with Other Laws"

The information provided campaigns and candidates was used as the necessary guidelines for making loans to the campaign for compliance with the Election Laws. *There was no willful attempt to skirt campaign finance laws*, in fact just the opposite. Using the referenced Federal Election Commission Guide for Congressional Candidates & Committees published 2011, Spanky LLC, under Mr. Loftus's guidance, went to great length to structure the two loan documents to meet normal business practices as well as obtain personal guarantees by the Candidate, including but not limited to repayment schedule, interest rates, and terms and conditions.

Referencing your Communication Log contact notes dated March 26, 2013 Mr. Tyler Culberson stated "....that the loans are considered excessive contributions because Spanky, LLC does not appear to be a lender that makes loans to candidates or candidate committees in their regular course of business."

**Under CFR 100.83 (a): Brokerage Loans & Other Lines of Credit Obtained by Candidates....."made by persons who make such loans in the normal course of their business". This was interpreted to mean "a company that makes loans to other businesses and people in the normal course of their business using standard business practices and interest rates". There is no specific language referencing ONLY loans to campaigns for congressional office. Spanky LLC made numerous loans in 2012 to other entities as demonstrated in our first response to the Federal Elections Commission.**

There was no reference in the Campaign Guide/Manual to the 11 CFR 110.1 (g)(4) that your letter referred to. In speaking with the Accountant for Spanky LLC about this matter, he stated that Spanky LLC is indeed a Limited Liability Company and organized under State of California Secretary of State as such.

At the time Spanky LLC was opened a form 8832 was not needed nor was there any mention of the need for this form in the information from the FEC manual. The manual clearly states under CFR 100.83 (a) that a line of credit, which these two loans were, needed to be done with normal business practices which they were and by an entity that makes loans in their normal business which Spanky LLC has demonstrated it was doing.


Spanky LLC's management and owner complied with the guidelines provided for Congressional Candidates and Committees (2012 edition) with *full intent to comply with then current finance laws*. In fact along with the "note" was included a promissory note by the individual Stanley Flemming.

There has certainly never been any willful intent to get around campaign finance laws. I have demonstrated that all legal recourse was taken to obtain repayment of these loans.

The unresponsiveness and unwillingness of Mr. Flemming to payback the loan, hindered successful closure of this matter for Spanky LLC. The management of Spanky LLC asks that the FEC Commissioners understand that Spanky LLC's management did everything in its power to obtain payment. There was never an attempt to skirt campaign finance laws and to "give" the candidate money.

We would appreciate that recommendations acknowledging that no one at Spanky LLC willfully or intentionally violated any Act and did in fact use legal recourse to rectify the matter in a timely manner, even though the Candidate, Stan Flemming did not.

Thanking you in advance,

  
David Loftus  
Spanky LLC

Encl: Statement by Carol Cain Flemming for Congress former Consultant

October 23, 2016 Spanky LLC response to Federal Election MUR7053

170747-158807

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COUNSEL

**Statement by Carol Cain, former Campaign Consultant for Flemming for Congress 2012: MUR 7053**

Mr. David Loftus of Spanky LLC has shared your correspondence regarding the loans made by Spanky LLC to Stan Flemming and the Flemming for Congress Campaign Committee 2012.

After reviewing all the information and going back to my files/emails from that time period I would like to submit the following information.

I functioned as Campaign Consultant for the Flemming for Congress Committee from November 2011 thru April 2013. I was not the Treasurer.

1. Legality of Loans from Spanky LLC to Flemming for Congress Committee
  - a. Reference used to determine legality: *Congressional Candidates and Committees August 2011 Federal Election Commission Campaign Guide*: page 36 #2 Brokerage Loans and Other Lines of Credit Obtained by Candidate: cites CFR 100.83(a) only.
  - b. Spanky LLC management provided copies of State of California Articles of Organization
  - c. Mr. Loftus, manager of Spanky LLC for Sherry Hackett discussed the best LEGAL way to organize financial help for the campaign in the form of loans to be used as line of credit only.
  - d. Loans and Promissory Notes were created with normal business practices, terms and conditions, interest rates and repayment deadlines.
  - e. I was privy to this information and met others that Spanky LLC had made loans to during the course of the campaign, so knew first hand that Spanky LLC did in fact make other loans in the course of its normal business.
2. Timely Payback of Loans by Committee
  - a. \$150,000 of \$200,700 loan was paid on July 5, 2012 – transfer was made by Carol Cain
  - b. Balance of loan was due per contract Dec 31, 2012 – was not paid by Committee or Stan Flemming.
  - c. Multiple meetings regarding payback were held by Mr. Loftus. Carol Cain was present at the following:
    - i. February 22, 2013
    - ii. April 8, 2013
    - iii. April 19, 2013
    - iv. June 4, 2013
      1. Loftus gave Flemming letter of demand
      2. Flemming refused to read or take the letter
  - d. Meetings between Carol Cain and David Loftus
    - i. June 9, 2013 Cain and Loftus phone conference with Attorney Sidwell – Morris
    - ii. June 28, 2013 Demand letter from Sidwell – Morris to Flemming
    - iii. July 17, 2013 Loftus and Cain met with Attorney Seward
      1. Demand letter sent by Attorney Seward
  - e. Meetings with Cain and Flemming(s) regarding loan and passwords/files for FEC
    - i. March 24, 2013
      1. Cain met with Martha Flemming
        - a. Copies of all files for FEC turned over to Flemming
        - b. Copies of all passwords and access information for FEC, Bank to Flemming

- ii. April 29, 2013 Stan Flemming and Carol Cain
  - 1. Discussed closing campaign
  - 2. Loan repayment
    - a. Flemming wanted the loan "forgiven"
    - b. Cain told him he had to repay
    - c. Cain officially off campaign
- iii. June 11, 2013
  - 1. Email to Flemming requesting changing all bank passwords
- iv. July 14, 2013
  - 1. Cain email to Flemming with FEC information/access .vcf file
  - 2. Cain email to Flemming with all passwords
- v. June 20, 2013 Extended Stay – Fife WA
  - 1. Cain turned over keys to storage unit to Flemming
  - 2. Cain gave flash drive to Flemming
  - 3. Flemming told Cain he had it all worked out with Loftus

To Emphasize a repeating question by the FEC investigators regarding the committee files.

Mr. Flemming stated he had spoken to the Campaign Manager and she had told him that she had spoken with the FEC and all matters were resolved. Mr. Flemming stated that he had contacted the campaign manager in August of 2013 and there was no response. He also stated that he and the Treasurer were given no passwords or files. ***That is incorrect. At no time did I speak with the FEC regarding this matter.***

***March 24, 2013 – Carol Cain met with Martha Flemming in Tacoma, WA. At that time copies of ALL passwords were turned over. Email follows to Stan Flemming inviting him to meeting.***

***April 29, 2013 – Carol Cain officially off the campaign – Mr. Flemming had no intent to payback the Spanky LLC loans – told Cain that he didn't have the money***

***June 11, 2013 – Email to Stan Flemming requesting he change all passwords to bank account.***

Mr. Flemming and Mrs. Flemming both ignored and stated incorrect facts pertaining to participation and communications with Mrs. Cain and Mr. Loftus, choosing in fact to blame others for their lack of attention to this problem. Mrs. Flemming refused to learn the software required by the FEC nor did she keep appointments with Mrs. Cain to discuss until March 24<sup>th</sup> 2013. ***At that time Martha Flemming was given ALL passwords to everything involving the campaign including the FEC software.***

***July 14, 2013 – Mr. Flemming was sent all passwords and .vcf file with information on it for the FEC. Copies of that email are included with this statement.***

Mr. Flemming stated he did not know how to get hold of me. While I did change my phone number in November 2013, my email has remained the same for 10 years. And it is still the same one he has. Plus Mr. Flemming and I have mutual friends in Washington State that would have gladly given him my new phone number if he had asked.

The attempts at collection of the remaining \$50,000 plus interest per the Loan agreement and Promissory Note to Stan Flemming and the Flemming for Congress Committee, took 2 attorney's and months to accomplish. Time that the FEC has mentioned to be problematic. We note here that it should be problematic for the Flemming for Congress Committee and the Flemmings, not Spanky LLC. Mr. Loftus for Spanky LLC completed all avenues of collection he could.

State of Ohio  
County of Franklin

Affidavit:

Before me, a Notary Public in and for said state, personally appeared Carol Cain, who being by me duly sworn (or affirmed) deposes and says that the Statement written to the Federal Elections Commission regarding MUR 7053 contained within this document is her statement in support of Spanky LLC. Further affiant sayeth naught.

(signed) Carol Cain October 23, 2016  
Carol Cain

Sworn to and affirmed before me and signed in my presence by Carol Cain this 23<sup>rd</sup> day of October, 2016.

(signed) Linda Gill 10-23-16  
Linda Gill

*Notary Public, State of Ohio*  
*My Commission expires 3/20/2021*

***There was never a conversation regarding this loan or anything else between Loftus, Hackett, Flemming or Cain that hinted at any intent to skirt Campaign Finance Laws. Quite the opposite in fact.***

During the time period that Flemming owed Spanky LLC \$50,000+, was refusing to pay it back and during the time he told me he would not pay me, he purchased a \$20,000 antique Nash Rambler (car) from a TV show.

**Mr. Flemming is a medical Dr. and Retired Army General and an Ambassador to the State of Washington from the Army. Mrs. Flemming was an Elementary School Principal.**

**My personal feelings regarding the Flemmings is they will blame everyone else for the problem and refuse to meet their obligations. They have done so in the past and seem to continue to do so.**

**Mr. Flemming deliberately delayed repayment of the loan to Spanky LLC. Not caring of the consequences to Mr. Loftus and Ms. Hacket – while not expecting any consequences to himself.**

The purpose of my statement to the FEC is to demonstrate that Mr. Flemming, while he may be a General and a Dr., is not a standup guy and purposefully did not comply with the FEC request to repay this loan. Putting aside the fact that he refused to pay my salary according to what we talked about, he certainly thought nothing of delaying repayment to Spanky LLC over and over, thus causing severe problems with the FEC.

On the other hand I observed Mr. Loftus and Ms. Hackett trying to follow the rules that they were given to help someone get elected. ***Not to skirt the FEC Campaign Finance Laws.*** To this day Mr. Loftus and Ms. Hackett are trying to close this matter out in a timely manner and have not spoken against Mr. Flemming. On the other hand I was witness to Mr. and Mrs. Flemming skirting the issues time and again thus creating more of a problem than it should have been.

Respectfully,

**Carol Cain**

**Marvsville, OHIO 43040**

Encl:  
 Emails: March 23, 2013 – discussion of meeting with Martha Flemming  
 June 11, 2013 – request for Flemming to change bank access passwords  
 June 11, 2013 – Email to/from Stan Flemming & Carol Cain about getting the loan repaid  
 June 13, 2013 – email to Flemming regarding keys for storage unit  
 July 14, 2013 – email with password and file information for FEC to Flemming

**Cain Statement to Federal Election Commission re: MUR 7053**

**October 23, 2016**

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**Carol Cain**

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**From:** Carol Cain  
**Sent:** Saturday, March 23, 2013 10:48 AM  
**To:** stanley flemming  
**Subject:** today

Good Morning,

I'm meeting Martha at 10 am for coffee and some campaign business - you are welcome to join us, in fact I encourage it!

Talk with you later

carol

17044413902

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**Carol Cain**

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**From:** Carol Cain  
**Sent:** Tuesday, June 11, 2013 4:17 PM  
**To:** stanley flemming  
**Subject:** Bank

Please change the password for the bank account so that I could not access it.

I have all of the information needed for the next report downloaded with regard to expenses and deposits.

Thank you  
carol cain

1/04/14-110000



## Carol Cain

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**From:** stanley flemming <  
**Sent:** Tuesday, June 11, 2013 5:02 PM  
**To:** Carol Cain  
**Subject:** RE: Storage unit  
  
**Importance:** High

Hi Carol;

I did talk about it briefly when you gave me the documents at the restaurant when I said I'd have an attorney look over the documents. What I didn't know at the time was that he also had history with the FEC. I'll try to find out how much he has talked about and to whom.

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**From:** !  
**To:**  
**Subject:** RE: Storage unit  
**Date:** Tue, 11 Jun 2013 12:50:08 -0700

Stan,

I really wish you would have told me about an attorney: I spoke with the attorney that Renee recommended and I am quite impressed with her working knowledge of the FEC. In fact I had just written the following email that I was going to send to you this afternoon. I am now worried that two attorney's calling will raise flags all over for the FEC and right now we have them quiet. I am trying to get this closed out without complications.

Here is what I wrote:

I have spoken with an attorney who specializes in FEC issues (Renee recommended) and while at the moment we have answered questions the FEC has asked, if there is no closure for the loan to Spanky, LLC, there will be more questions and a review.

The loan may not be "forgiven". The loan was made within the parameters of the FEC rules and I am confident that Spanky meets the criteria specified for now. However, and it is a very big however, if a payment schedule is not arranged and payments made, this loan becomes an illegal contribution and there is exposure for both you and David.

The campaign committee cannot be closed without this loan taken care of. Reports will have to be filed quarterly until the loan is paid off. Everything else may be closed out.

When we met last week, you said you would review the loan modification taking the loan out of the committee name and making it yours only. I have asked the attorney to review this and let us know if this is even possible and would be accepted by the FEC. I should have that answer within a day. You already have a loan in both the committee and your name that is 6 months overdue.

This loan has to be kept legitimate with current business practices or the FEC will treat it as an illegal contribution and that goes back on both you and David.

**Carol Cain**

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**From:** Carol Cain  
**Sent:** Thursday, June 13, 2013 10:27 PM  
**To:** stanley flemming  
**Subject:** FW: Storage

You didn't let me know how you want to get the keys.....

I have keys for the unit. I can leave them at the front offices at the storage offices or I can put them in an envelope for you to pick up here at the hotel - whichever you prefer. The storage unit offices are not open on Sunday's.

**From:** stanley flemming [mailto:stanley.flemming@hawaii.gov]  
**Sent:** Thursday, June 13, 2013 2:14 PM  
**To:** Carol Cain  
**Subject:** Re: Storage

Thanks Carol for everything. Having lunch with Richardson at the moment...interesting to say the least.

Sent from my iPhone

On Jun 13, 2013, at 1:38 PM, "Carol Cain" > wrote:

Here is a picture of what is in storage...most of the stuff is throwaway and their dumpster was full (won't be picked up until Monday).

There are 3 boxes with signs/stakes, several boxes of literature, cards and remits - why the heck we didn't use those for the campaign I will never understand....and fans and cups...again I have no clue why these were not taken to events or parades.....

No files or anything important in the boxes. There is a tool box and a couple of lose tools..... maps of the district etc.

Your life-size standup picture is at the back behind the signs, you can see it when you open it up.

There is one printer and one older monitor..

The storage unit is on Hwy 16 just past the cemetery.

Code for gate: .....

8A

**Carol Cain**

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**From:** Carol Cain <  
**Sent:** Sunday, July 14, 2013 10:21 AM  
**To:** stanley flemming  
**Subject:** FW: Fec questions  
**Attachments:** Fec questions.vcf

Stan,

I'm glad you told me you were doing this - I was under the impression that I was doing this one. It's fine with me, I just would have liked to have been informed. Since I have not given you the flash drive with the filing information, I'm not quite sure how you were intending to file, but if you have a way, great.

I have included the information in .vcf format - you should be able to just click on it and open.

The password: